

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 3, 4 and 27 were previously cancelled without prejudice or disclaimer of the subject matter contained therein. Claims 1, 2, 10, 11, 13, and 26 have been amended. Claims 1, 2, and 5-26 are pending in the present application, of which Claims 1, 2, 13, and 26 are independent.

Priority Document Received By USPTO

The indication (see the checked portions under section 12 in the Final Office Action Summary) that the certified copy of the priority document has been received by the USPTO is noted with appreciation.

IDS Considered

The indication enclosed with the Final Office Action that the Information Disclosure Statements (IDS's) filed on March 1, 2004 and August 4, 2008 and references listed therein have been considered is noted with appreciation.

Drawings Approved

The indication (see the checked portions under section 10 of the Final Office Action) that the Drawings (submitted on March 1, 2004) have been approved is noted with appreciation.

Claim Rejection Under 35 U.S.C. §101

Claims 1 and 27 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In particular, the Office Action asserts that Claim 1 could be interpreted as purely software. Claim 27 was cancelled, without prejudice, in Amendment A, thereby rendering this rejection moot with respect to this claim. However, with respect to Claim 1, Applicants respectfully traverse this rejection.

Claim 1 has been amended to include “a search unit searching, from the information recorded in the traffic recording unit, the flowing-in path of unauthorized access . . .”. The traffic recording unit in which the information is recorded is never software per se, but is instead a particular machine or apparatus. Therefore, the subject matter of Claim 1 produces a useful, concrete, and tangible result. Further, since Claim 1 is tied to a specific machine or apparatus for at least some of the process steps, this claim satisfies the machine-or-transformation test outlined in In re Bilski, 545 F.3d 943 (Fed. Cir. 2008). Accordingly, withdrawal of this §101 rejection of independent Claim 1 is respectfully requested.

Claim Rejections Under 35 U.S.C. §112

Claims 1 and 26 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants have amended the claims to more particularly point out and distinctly claim their subject matter. Accordingly, in light of the claim amendments, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

Claims 1, 2, 5-9, 12-18, and 22-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Talpade et al. (U.S. Publication No.2004/0148520, hereafter Talpade) in view of Tovander (U.S. Patent No.6,715,083, hereafter Tovander). Claims 10, 11 and 19-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Talpade in view of Tovander and in further view of Kaler et al. (U.S. Publication No.2004/0003286, hereafter Kaler). Applicants respectfully traverse these rejections.

Independent claim 1 recites (among other things) “a notification unit notifying a flow source adjacent to the user’s communication network of the determination of the countermeasure implementation planning place, when the determination unit determines the flow source as the countermeasure implementation planning place for a reason that the unauthorized access was flowed into the user’s communication network.” As will be explained below, at least this feature of Claim 1 is a patentable distinction over each of Talpade and Tovander.

The Examiner asserts in the Final Office Action that Tovander teaches notifying the flow source of the source of the unauthorized access flow by teaching an IAM message that is sent to the source of a hacking attempt that includes an indication of the host source of the hacking attempt. *See* page 2, line 15, to page3, line 3, of the Final Office Action).

Tovander teaches that the potential hacker can be identified by using the IAM message (*see* Tovander, column 8, lines 23-28), and that the IAM message passes backward along the packet pathway between the source 110 operated by the potential hacker and the destination computer 140 from the destination computer 140 to ISP1 (*see*

Tovander, column 6, lines 32-37 and Fig.3). Therefore, Tovander teaches at least a transmission of the IAM message from ISP6 to ISP5 (which is only on the way to ISP1).

However, the IAM message is merely for ISP1, to which the source 110 operated by the potential hacker belongs, to make ISP1 implement a countermeasure for protecting from hacking, and it is not for ISP5 which is adjacent to ISP6 to which the destination computer 140 belongs. So, ISP5 does not implement the countermeasure even if ISP5 receives the IAM message from ISP6.

Hence, at least one of the features of Claim 1, namely “a notification unit notifying a flow source adjacent to the user’s communication network of the determination of the countermeasure implementation planning place, when the determination unit determines the flow source as the countermeasure implementation planning place for a reason that the unauthorized access was flowed into the user’s communication network,” is not disclosed or suggested in Tovander. The noted feature is also a distinction over each of Talpade and Kaler, as evidenced by the Final Office Action described above.

Additionally, the technique using the IAM message taught by Tovander is relevant to “(1) Technology to prevent DDoS by expanding IP packet,” explained by the present Specification on page 2, lines 13-19. Tovander teaches that a source ISP to which an attacker belongs can be specified by using the IAM message and tracking back the packet pathway from the target to the attacker. However, it is necessary to modify the IP protocol to use the IAM message. Meanwhile, this claimed invention can specify ISP closer to the attacker without modifying the IP protocol. So, there is no need to replace communication network connecting devices such as routers or switches.

Among other things, a *prima facie* case of obviousness must establish that the asserted references teach or suggest each and every element of the claimed invention. In view of the distinction of independent Claim 1 noted above, at least one claimed element is not present in the asserted combination references. Hence, the Final Office Action fails to establish a *prima facie* case of obviousness for independent Claim 1.

Independent Claim 2 recites (among other things) a feature similar to the above-noted feature of claim 1. Accordingly, at least the feature Cf claim 2 that is similar to the above noted feature of Claim 1 provides a distinction over the asserted combination of references. Claims 5-12, and 15-25 ultimately depend from Claim 2, and so are at least similarly distinguish over the asserted combination of references.

Independent Claim 13 recites (among other things) a feature similar to the above-noted feature of Claim 1. Accordingly, at least the feature of Claim 13 that is similar to the above noted feature of Claim 1 provides a distinction over the asserted combination of references. Claim 14 ultimately depends from claim 13, and so at least similarly distinguishes over the asserted combination of references.

Independent Claim 26 recites (among other things) a feature similar to the above-noted feature of Claim 1. Accordingly, at least the feature of Claim 26 that is similar to the above noted feature of Claim 1 provides a distinction over the asserted combination of references.

In view of foregoing discussion, the rejections of Claims 1, 2 and 5-26 are asserted to be improper. Accordingly, withdrawal of the rejections is respectfully requested.

For all of the above reasons, Applicants request reconsideration and allowance of the claimed invention. Should the Examiner be of the opinion that a telephone conference would aid in the prosecution of the application, or that outstanding issues exist, the Examiner is invited to contact the undersigned attorney.

If a Petition under 37 C.F.R. §1.136(a) for an extension of time for response is required to make the attached response timely, it is hereby petitioned under 37 C.F.R. §1.136(a) for an extension of time for response in the above-identified application for the period required to make the attached response timely. The Commissioner is hereby authorized to charge any additional fees which may be required to this Application under 37 C.F.R. §§1.16-1.17, or credit any overpayment, to Deposit Account No. 07-2069.

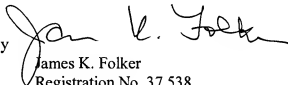
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Suite 2500
300 South Wacker Drive
Chicago, Illinois 60606
(312) 360-0080

Customer No. 24978
P:\DOCS\150369885\DV0338.DOC

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By 
James K. Folker
Registration No. 37,538